the Court of King's Bench were evenly divided on the question of the liability of the carriage owner to be sued for such injury. The next case involving the point was *Quarman* v. *Burnett,* 6 M. & W. 498, where the owners of a carriage were accustomed to hire, from a stable-keeper, horses, for a day or drive; and the owner of the horses provided a driver. The same driver was always furnished, and the owners of the carriage had a suit of livery made for him, which he wore while driving for them. The driver's regular wages came from the stable-keeper. A third party was injured by the driver's negligence, and it was held that the owners of the carriage were not liable to be sued for such injury. This decision has been recognized and followed in England. *Rapson* v. *Cubitt,* 9 M. & W. 711; *Milligan* v. *Wedge,* 12 Ad. & E. 737; *Hobbit* v. *London & N. W. Ry. Co.,* 4 Welsby, H. & G., 254; *Jones* v. *Mayor of Liverpool,* 14 Q. B. D. 890. The doctrine of the English courts has been generally approved and followed by the courts of the United States. *Huff* v. *Ford,* 126 Mass. 24; *Driscoll* v. *Towle,* 181 Mass. 416; *Ash* v. *Century Lumber Co.,* 153 Ia. 523 (containing a thorough discussion of the cases); *Frerker* v. *Nicholson,* 41 Colo. 12; *Joslin* v. *Grand Rapids Ice Co.,* 50 Mich. 516; *Higham* v. *Waterman Co.,* 32 R. I. 578; *Morris* v. *Trudo,* 83 Vt. 44; *Little* v. *Hackett,* 116 U. S. 366; *Standard Oil Co.* v. *Anderson,* 212 U. S. 215. The New York courts appear to have had some difficulty in determining the questions raised by this class of cases, but seem to have concluded to draw a line of distinction between those cases in which the employee is exclusively at the service of the hirer, and those cases in which the employee is at the service of others as well as that of the hirer; making the hirer liable, as his master, in the former class, and the general employer in the latter. *Lewis* v. *Long Island R. R. Co.,* 162 N. Y. 52; *Kellogg* v. *Church Charity Foundation,* 203 N. Y. 191; *Schmedes* v. *Deffaa,* 214 N. Y. 675 (reversing 153 App. Div. 819); *Hartell* v. *Simonson,* 218 N. Y. 345. The court in the instant case divided three to two. There is no dispute as to the proper test to be applied, which, all courts agree, is: whose work is being done, and who, during the course of the work, has or exercises control of the doing of the work. The conflict comes in the attempts to apply the test. The majority in the instant case held that it was the defendant's work that was being done, and that he had control of the doing of it; while the minority was of the opinion that it was the general employer's work that was being done, and that it had control of the doing of it.

PARENT AND CHILD—INJURY FROM ACT OF CHILD—NEGLIGENCE OF PARENT FOR JURY.—The defendant, owner of a gun for which he no longer had any use, broke the stock, leaving however the operative parts intact, and threw it under his bed, intending to conceal it there, from his children. The gun was found by his son, a boy of about thirteen years, who knew of his father's possession of the gun, but who had never been given any instruction as to the danger of its use, and who was ignorant of the fact that it was still loaded. The son repaired the gun stock and in play shot the plaintiff, who brings suit by his father as next friend for injuries sustained thereby against the defendant. *Held,* under facts of above case whether defendant was neg-

ligent in allowing his son to get possession of a loaded rifle and whether such negligence was the cause of the injury, were questions for the jury. *Salisbury* v. *Crudale,* (R. I., 1918), 102 Atl. 731.

The rule is well settled that a parent is not liable for the torts of his child. *Chastain* v. *Johns,* 120 Ga. 977. *Kumba* v. *Gilham,* 103 Wis. 312. But acts of the parent may be so related to acts of the child as to constitute negligence in the parent, his acts being the *causans* of the injury. *Palm* v. *Ivorson,* 117 Ill. App. 535. For instance there may be a legal duty upon a parent towards the general public to guard against a boy obtaining possession of guns or other dangerous weapons. *Sullivan* v. *Creed,* (1904), 2 Ir. K. B. D. 317. The liability rests on the duty of every man to use his own property so as not to injure the person or property of others. *Carter* v. *Towne,* 98 Mass. 567. In cases of this character the question of the negligence of the parent is a question for the jury. *Brittingham* v. *Stadiem,* 151 N. C. 299; *Sullivan* v. *Creed, supra; Meers* v. *McDowell,* 110 Ky. 926; *Binford* v. *Johnston,* 82 Ind. 426; *Phillips* v. *Barnett,* (N. Y.), 2 City Ct. R. 20. But in *Swanson* v. *Crandall,* 2 Pa. Super. Ct. 85 it was held that the discovery of a revolver in a bureau drawer by a child of five years could not have been reasonably anticipated and that there was no evidence to go to the jury on the question of negligence. In *Phillips* v. *Barnett,* (N. Y.), (*supra*) on almost the same facts the question of negligence was submitted to the jury. In *Hagerty* v. *Powers,* 66 Cal. 368 it was held that the father of a child eleven years old is not liable for negligently allowing him to have a loaded pistol with which he carelessly shot another child. This case was poorly decided in that the court totally ignored the question of the father's negligence and based their decision entirely on the theory that a father is not liable for the torts of the son. A parent is not liable for the tort of his infant son arising from permitting his son to use fire arms where it appears that such son was twelve years of age, experienced in the use of fire arms, acquainted with their construction and proper mode of carrying, handling and discharging the same and had been habitually careful. *Palm* v. *Ivorson,* (*supra*).

Sales—Implied Warranty in Sales of Food.—Defendant, a druggist, sold to the plaintiff, for consumption, ice-cream, which he had prepared. Plaintiff became violently sick after eating it due to the presence in it of a poison known as tyrotoxicon. *Held,* defendant was liable on an implied warranty that the ice-cream was fit for human consumption. *Race* v. *Krum,* (N. Y., 1918), 118 N. E. 853.

Whenever special reliance is placed by the vendee on the vendor in the selection of wholesome food, the courts uniformly hold there is an implied warranty as to fitness. *Bigge* v. *Parkinson,* 7 H. & N. 955; *Beer* v. *Walker,* 37 L. T. N. S. 278; *Burrows* v. *Smith,* 10 T. L. R. 246; *Wallis* v. *Russell* [1902] 2 Ir. R. 585, even though the vendee is a skilled tradesman buying to sell again, *Copas* v. *The Anglo-American Provision Co.,* 73 Mich. 541; *Bailey* v. *Nickols,* 2 Root (Conn.) 407; *Truschel* v. *Dean,* 77 Ark. 546; or if the food is for animals: *Coyle* v. *Baum,* 3 Okla. 695; *Deason* v. *McNeill,* 133 Ill.